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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

DOCKET NO. 72-6299

UNITED STATES OF AMERICA,

Appellee,

vs.

JOHN A. GREELEY,

Appellant.

CRIMINAL ACTION—ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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18 U.S.C. Sec. 659	1, 3

RULE CITED:

Rule 39	4

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

The appellant, John A. Greeley, herein prays to the Justices of the Supreme Court of the United States for the granting of the petition for a writ of *certiorari* from a judgment entered in the United States Court of Appeals for the Third Circuit under Docket No. 72-1376, said judgment being rendered on December 14, 1972, The Honorable Judges Kalodner, Adams and Rosenn sitting, Circuit Judges.

OPINION BELOW

An opinion was rendered by the Third Circuit Court of Appeals on December 14, 1972, said judgment being filed December 14, 1972, denying the appeal of the appellant, John A. Greeley, a copy of said opinion being attached hereto to this petition.

JURISDICTION

The jurisdiction of the United States Supreme Court is based upon the indictment and conviction of the appellant under 18 U.S.C. Sec. 659, to wit: possession of stolen goods, moving in interstate commerce, knowing them to have been stolen, and the violation of this appellant's constitutional rights under the 4th, 5th, 6th and 14th amendments to the United States Constitution, that being a deprivation of due process according to law, said deprivation of due process leading to a conviction of this appellant contrary to fundamental constitutional principles.

The date of the judgment and entry of this judgment sought to be reviewed is December 14, 1972.

The statutory provision which confers jurisdiction on this court to review the judgment in question is set forth above, 18 U.S.C. Section 659, and the constitutional provisions enunciated above.

QUESTIONS PRESENTED

The particular questions presented for review in this petition are as follows:

1. Whether it was error for the trial court over the objection of appellant's attorney to have permitted the U.S. Attorney to cross-examine the appellant, John A. Greeley, concerning a 1959 prior conviction at a time when the appellant took the stand upon his own behalf in an effort to rebut the rule of law that possession of recently stolen property warrants an inference of guilty knowledge unless satisfactory explanation of possession is made consistent with innocence, *United States v. Anost*, 356 F. 2d 413 (7 Cir. 1966), and whether said error violated the Fifth and Sixth Amendments to the United States Constitution, *United States v. Bailey*, 426 F. 2d 1236 (D.C. 1970).

2. Whether the trial court erred in admitting a photocopy of a time record of an employee of a company where the employee did not testify, and further where there was no satisfactory explanation made as to why the original was not produced.

3. Whether the admission of the time record, G-1 in evidence, violated the appellant, John Greeley's Sixth Amendment guarantee of confrontation of witnesses. *United States v. Lipscomb*, 435 F. 2d 795 (5 Cir. 1971).

4. Whether it was error for the trial court to have charged the jury that possession of recently stolen property permits the jury to infer guilty knowledge unless satisfactory explanation is made consistent with innocence, where the only method by which the appellant, John A. Greeley, could rebut said inference is to take the stand, knowing he could be cross-examined by the U.S. Attorney on his prior 1959 robbery conviction, and whether that error violated this appellant's guarantee under the Fifth and Sixth Amendments to the United States Constitution.

REASONS FOR GRANTING WRIT

The appellant, John A. Greeley, and Ronald F. Greeley, were arrested on November 3, 1969, at the Green Hills Shopping Center, Parsippany, New Jersey, and charged with violation of 18 U.S.C. Sec. 659, to wit: that they knowingly had in their possession stolen goods having a value in excess of $100.00, which goods were stolen while moving as part of a shipment in interstate commerce.

Under 18 U.S.C. Sec. 659, a jury may infer guilty knowledge of the defendant where it is proven that he was in possession of the recently stolen goods, and such was the charge of the trial court. As a result thereof, the appellant, John A. Greeley, was compelled to take the stand in an effort to rebut this disastrous inference. Yet, after he was questioned on direct examination, the U.S. Attorney was permitted, over counsel's objection, to cross-examine the appellant on his prior 1959 robbery conviction.

It is contended that this situation effectively deprived the appellant of due process of law. If the prosecutor is to rely on the inference of guilty knowledge, he should not be able to cross-examine the appellant on his prior convictions.

By analogy, a similar situation occurred where a prosecutor was permitted to comment to the jury on defendant's failure to take the stand, now repudiated by this court. *Griffin v. State of California*, 380 U.S. 609, 85 S. Ct. 1229, 14 L.Ed. 2d 106 (1965).

The basis for Federal jurisdiction of the court in the first instance was a prosecution under 18 U.S.C. Section 659.

It is prayed that this Court prohibit the procedure utilized in this case where a defendant is compelled to testify on his own behalf by reason of the inference stated above.

A copy of the opinion of the Third Circuit Court of Appeals is attached hereto dated December 14, 1972.

The Honorable Court is advised that this petition for *certiorari* is being brought by the petitioner in *forma pauperis*.

The petition for writ of *certiorari* has been presented in conformity with *Rule* 39.

Dated: January 10, 1973.

Respectfully submitted,

/s/ Robert A. Abrams
ROBERT A. ABRAMS
Attorney for Appellant,
John A. Greeley

ADDENDUM "A"

IN THE

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

NOS. 72-1376 AND 72-1377

UNITED STATES OF AMERICA

vs.

JOHN A. GREELEY

RONALD F. GREELEY

JOHN A. GREELEY,
Appellant in No. 72-1376

RONALD F. GREELEY,
Appellant in No. 72-1377

(D. C. CRIMINAL NO. 351-70)

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ARGUED OCTOBER 30, 1972
BEFORE KALODNER, ADAMS AND ROSENN,
Circuit Judges

Opinion of the Court
(Filed December 14, 1972)

PER CURIAM:

These appeals are from judgments of conviction entered by the District Court pursuant to jury verdicts find-

ing the defendant-appellants guilty of possession of stolen goods, moving in interstate commerce, knowing them to have been stolen, in violation of 18 U.S.C.A. § 659.

On these appeals the appellants contend that the jury's verdicts were against the weight of the evidence and that acquittals should be directed. They also challenge as prejudicial error several of the trial judge's rulings on the admission of evidence and his instructions to the jury.

On review of the record we are of the opinion that the evidence adduced at the trial amply supported the jury's guilty verdicts and that the appellants' challenges to the trial judge's evidentiary rulings [1] and charge fail to demonstrate prejudicial error.

We do not subscribe to the contention of the appellant John Greeley that the trial judge abused his discretion in permitting the Government to cross-examine him, for impeachment purposes, with respect to his June 16, 1960 robbery conviction which resulted in his imprisonment until 1965. The contention is premised on two grounds: (1) remoteness of the conviction; and (2) its alleged prejudicial effect.

We need only say as to this contention, that we recently re-affirmed the rule in this Circuit that subject to certain limitations, inapplicable here, a felony conviction may be adduced to impeach the credibility of a witness. *United States v. Gray*, — F.2d —, No. 71-1430 (decided October 3, 1972). Further, we have specifically held that a trial judge did not abuse his discretion in admitting, for impeachment purposes, evidence of a 10-year-old

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1. The defendant-appellant Ronald Greeley's challenge to the trial judge's denial of his request for inspection of certain F.B.I. interview reports is without basis. The reports do not contain Jencks Act (18 U.S.C.A. § 3500), or exculpatory (*Brady v. Maryland*, 373 U.S. 83 [1963]), material.

felony conviction of a witness. *Wounick v. Hysmith*, 423 F.2d 873 (1970).[2]

For the reasons stated the judgments of conviction will be affirmed.

A True Copy :

Teste :

Clerk of the United States Court of Appeals for the Third Circuit.

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2. The Rules of Evidence for United States Courts and Magistrates, promulgated by the Supreme Court of the United States on November 20, 1972, to take effect on July 1, 1973, provide as follows:

"Rule 609. *Impeachment by Evidence of Conviction of Crime*

"(a) *General rule.*—For the purpose of attacking the credibility of a witness, evidence that he has been convicted of a crime is admissible but only if the crime (1) was punishable by death or imprisonment in excess of one year under the law under which he was convicted or (2) involved dishonesty or false statement regardless of the punishment.

"(b) *Time limit.*—Evidence of a conviction under this rule is not admissible if a period of more than 10 years has elapsed since the date of the release of the witness from confinement imposed for his most recent conviction, or the expiration of the period of his parole, probation, or sentence granted or imposed with respect to his most recent conviction, which ever is the later date.

". . . ." 41 U.S.L.W. 4021, 4028.

In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-6299

JOHN A. GREELEY, PETITIONER

v.

UNITED STATES OF AMERICA

ON MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS AND ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner contends that he was deprived of a fair trial because, in taking the stand to rebut the inference of guilty knowledge in regard to his possession of recently stolen property, he opened himself to cross-examination about his prior felony conviction.

After a jury trial in the United States District Court for the District of New Jersey, petitioner and his brother, Ronald Greeley,[1] were convicted of the knowing possession of goods stolen from interstate commerce, in violation of 18 U.S.C. 659. Petitioner was sentenced to eighteen months' imprisonment. The court of appeals affirmed *per curiam* on December 14, 1972 (Pet. App.

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[1] The petition of Ronald Greeley for a writ of certiorari is now pending, No. 72-6057.

A). The petition for a writ of certiorari was not filed until January 18, 1973, and is out of time under Rule 22(2) of the Rules of this Court. There is, in any event, no reason for further review.

On November 3, 1969, a truck loaded with approximately 1400 packages from a large retail store was stolen from a United Parcel Service terminal in Secaucus, New Jersey (Tr. 1.50-1.51, 3.17).[2] The packages were labeled with the names and addresses of the store's customers to whom they were to be delivered (Tr. 3.73). Three days after the theft, petitioner, his co-defendant, and an unidentified youth were discovered removing the packages from the basement of a beauty parlor and loading them into a U-Haul truck rented that day by petitioner. The youth fled when police approached, but petitioner and his brother were apprehended (Tr. 2.2-2.4). Nearly 1200 of the parcels were still wrapped, with the name of the store and the identities of the intended consignees clearly visible (Tr. 3.73).

Petitioner testified that he met a man named "Joe" at a bar. On the day prior to the arrests, "Joe" offered petitioner $200 to move some things from a warehouse in Parsippany to another warehouse in Jersey City. "Joe" gave petitioner $100 plus $50 to rent a truck. The balance was to be paid on delivery. Petitioner enlisted his brother's assistance, rented a U-Haul, and went to the beauty parlor where they were to pick up the load. After loading the truck, petitioner was supposed to call "Joe" at the El Dorado Diner to learn the delivery point, since "Joe" had not de-

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[2] "Tr." refers to the trial transcript. We are lodging a copy with the Clerk of this Court.

cided where to put the goods. Petitioner denied having given a conflicting statement to an F.B.I. agent after his arrest, and he claimed that the agent had prevented him from calling "Joe" to verify his story (Tr. 5.2-5.13).

F.B.I. agent Larry Schneider, a prosecution rebuttal witness, testified that he had interviewed petitioner after his arrest. Petitioner told him that he had met a man named "Joe" at a bar whose name he could not recall. "Joe" offered him $50 to move the goods. Petitioner could not or would not describe "Joe" and said that he had no way to contact him (Tr. 5.20-5.21, 5.31).

Petitioner alleges that he was deprived of a fair trial because he was, in effect, forced to testify in order to rebut the inference that he knew the property was stolen, thereby subjecting himself to cross-examination concerning a prior conviction.

Counsel for petitioner stated in opening argument, prior to the presentation of the prosecution's case, that his client would take the stand (Tr. 1.15). At the conclusion of the government's evidence, petitioner's attorney stated again that petitioner would testify, but proposed that the prosecutor be prohibited from inquiring into petitioner's prior criminal record because of the length of time that had elapsed since petitioner's convictions in 1959 and 1960 on charges relating to a robbery committed in 1957 (Tr. 4.8-4.16). The prosecutor pointed out that petitioner had been in jail until as recently as 1965 and stated his intention to cross-examine only with regard to the more recent conviction (Tr. 4.16, 4.21-4.22).

The court denied petitioner's motion to restrict cross-examination and the prosecutor questioned petitioner as follows:

Q. Have you ever been convicted of a crime?

A. Yes, I was convicted of a crime.

Q. Wasn't that crime robbery?

A. Right, robbery in 1957 [Tr. 5.17].

On re-direct, petitioner's counsel elicted further information concerning this conviction (Tr. 5.17-5.19) and again alluded to it several times during the course of his summation (Tr. 5.67, 5.75).

As the record reveals, petitioner intended from the beginning to testify in his own defense, even before he became aware that the court would instruct the jury that guilty knowledge may be inferred from the possession of recently stolen property (Tr. 1.15). Petitioner therefore cannot complain that this instruction "compelled" him to testify to rebut the inference. In any event the Fifth Amendment is not concerned with the kind of "compulsion" generated by the evidence, or the inferences from the evidence that are founded on rational experience such as the inference in question here. *Turner* v. *United States*, 396 U.S. 398, 417-418; *Yee Hem* v. *United States*, 268 U.S. 178, 185.[3]

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[3] The same instruction is at issue in regard to a different offense in *Barnes* v. *United States*, No. 72-5443, argued March 20, 1973. The outcome of that case, however, need not control the disposition of the instant petition, since the factual background is significantly different. Apart from the manifest rationality of the inference where the property possessed is a large number of clearly marked, recently stolen packages, the evidence also shows that one of petitioner's associates fled as

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

APRIL 1973.

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police arrived. In these circumstances, the inference is derived merely from the weight of the evidence in the case.

Moreover, the instruction in the instant case provided (Tr. 6.20):

> Surrounding circumstances that are relevant in determining whether to infer guilty knowledge from the recent possession of goods are (1) the type of stolen merchandise possessed by the defendants; (2) the quantity of stolen merchandise possessed by the defendants; (3) distinctiveness of the packaging of the stolen merchandise possessed by the defendants; (4) the indication of true ownership of the stolen goods possessed by the defendants; and, (5) the place where the stolen merchandise possessed by the defendants was found.

The instruction thus did nothing more than state the obvious: guilty knowledge may be inferred from possession of recently stolen goods when the circumstances surrounding that possession are such that it is reasonable to conclude that the person possessing the goods had such knowledge.